

SUPREME COURT OF ARKANSAS

No. CR 08-738

EDWARD S. MCWILLIAMS,
APPELLANT,

VS.

STATE OF ARKANSAS,
APPELLEE,

Opinion Delivered September 4, 2008

MOTION FOR RULE ON CLERK

MOTION TREATED AS BELATED
APPEAL; GRANTED.

PER CURIAM

Appellant Edward S. McWilliams, by and through his attorney, Robert N. Jeffrey, has filed a motion for rule on clerk. Appellant pled guilty to possession of a firearm by certain person on November 23, 2004, was sentenced to probation for five years and ordered to pay a fine, court costs, and attorneys' fees. By judgment and commitment order entered March 4, 2008, Appellant's probation was revoked, and he was sentenced to eighty-four months in the Arkansas Department of Correction. On March 14, 2008, an amended judgment and commitment order was entered to correct a clerical error that the commitment was a result of the revocation of his probation. Appellant filed a notice of appeal on April 7, 2008, from the judgment and commitment order entered March 4, 2008. The record was completed and filed with the trial court on June 19, 2008, and tendered to the clerk of this court on June 23, 2008. The supreme court clerk refused to file the record because the notice of appeal was filed more than thirty days after the first judgment and commitment order was entered.

Appellant's counsel filed this motion for rule on clerk, candidly admitting therein that he did not file the notice of appeal within thirty days of the entry of the first judgment.

Where a motion for rule on clerk is filed in error, it will be treated as a motion for belated appeal. *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). Despite Appellant's failure to properly perfect this appeal, the State cannot penalize a criminal defendant by declining to consider his first appeal when counsel has failed to follow appellate rules. *Morris v. State*, 373 Ark. 190, ___ S.W.3d ___ (2008) (per curiam) (citing *Franklin v. State*, 317 Ark. 42, 875 S.W.2d 836 (1994) (per curiam)). Consistent with our explanation of handling motions for rule on clerk and belated appeals in *McDonald*, 356 Ark. 106, 146 S.W.3d 883, we consider this a motion for belated appeal. Because counsel candidly admits fault, we grant the motion for belated appeal and direct the clerk of this court to accept the record and docket the appeal. We forward this opinion to the Committee on Professional Conduct.

Motion treated as belated appeal; granted.